IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1222 OF 2004

Purandar Bharmappa Magdum
(since deceased through L.Rs.) ...Appellants

Vs.

Smt.Housabai Bhalchandra Magdum & Ors. ...Respondents

Mr.A.S.Khandeparkar with Mr.S.M.Kamble for the Appellants
Mr.Surel Shah for the Respondent Nos.1 to 4.

CORAM: A.S.OKA, J.
DATED: APRIL 13,2005.

P.C.:

1. Heard Shri Khandeparkar for the Appellants and Shri Shah for Respondent No.1. The Appellants are some of the Defendants. In R.C.S.No.618 of 1973, a decree of maintenance was passed in favour of the Respondent No.1-original Plaintiff who is a widow. Present suit was filed by the Respondent No.1 in the year 1988 seeking enhancement in the amount of maintenance which was earlier granted under Hindu Adoption and Maintenance Act, 1956. The learned Trial Judge passed a decree against Defendant Nos.1a to 1e, 2 to 4 and 6 to 8 directing them to pay maintenance at enhanced rate of Rs.900/- p.m. to the Respondent No.1 from the date of decree. An Appeal was preferred by the Respondent No.1. The Appeal was partly allowed and the Appellate Court directed the concerned Defendants to pay maintenance of Rs.20,000/- p.a. to the Respondent No.1 from the date of institution of the suit. In addition to the yearly maintenance, concerned Defendants were directed to pay Rs.4600/- to the Respondent

No.1 towards Pilgrimage expenses.

2. Shri Khandeparkar appearing for the Appellants submitted that the Judgment of the Appellate Court is perverse in as much as there is no reason to enhance the maintenance which was fixed by the Trial Court at the rate of Rs.900/- per month i.e. Rs.10,800/- per year. He submitted that the sum of Rs.4,600/- directed to be paid to the Respondent No.1 towards pilgrimage expenses cannot form a part of the maintenance and therefore the Court had no jurisdiction to pass the said direction. He submitted that the suit was filed on 17th August 1988 and the decree passed by the Appellate Court to pay maintenance at the enhanced rate of Rs.20,000/- p.a. from the date of suit is extremely harsh. He pointed out that the concerned Defendants are paying maintenance at the rate fixed by the Trial Court. Lastly, he submitted that it must be clarified that the concerned Defendants are liable to pay maintenance as per their proportionate shares in the suit property. Shri Shah appearing for Respondent no.1 has supported the impugned Judgment and Decree. On instructions, he fairly stated that enhanced amount of maintenance as directed by the Appellate Court may be made payable from 1st January 1994.

3. I have considered the rival submissions. The Appellate Court considered the oral and documentary evidence and came to the conclusion that minimum total yield of sugar-cane from

the property in possession of the Defendants is to the extent of 1000 tons per year and considering the minimum rate @ Rs.500/- per ton, the total income from the agricultural lands was Rs.5,00,000/-. The learned Judge noted that even assuming that 50% of income is spent on cost of cultivation still the yearly income will be Rs. 2.5 lakh. The Appellate Court noted that there was rental income received from the properties of the joint family. The Appellate court held that considering the advanced age of Respondent No.1 of 85 years it was not expected of her to cook food for herself and to do household work and at this stage she will require assistance. The Appellate Court also noted the desire of the Respondent No.1 to go for pilgrimage and considering her advanced age, the Appellate Court directed the payment of Rs.4,600/- to the Respondent No.1.

4. If the findings of fact recorded by the Appellate Court are considered, in my view, the maintenance amount fixed at Rs.20,000/- per year is very conservative. Considering the large income of the family, the Appellate Court has fixed the sum of Rs.20,000/- p.a. Instead of granting more amount towards maintenance, the Appellate Court directed that the Respondent No.1 should be paid a sum of Rs.4,600/- towards pilgrimage expenses. No fault can be found with the quantum fixed by the Appellate Court.

5. There is some substance in the grievance made by Shri

Khandeparkar appeariang for the Appellants that the maintenance at the enhanced rate should not have been ordered to be paid from the date of institution of the suit i.e. from 17th August 1988. The learned Counsel for the Respondent No.1 fairly agreed that the maintenance at the rate fixed by the Appellate Court may be directed to be made payable from 1st January 1994. The case of the Appellants is that they have already paid maintenance as per the decree passed by the Trial Court. Time of one year can be granted to the concerned Defendants to comply with the decree passed by the Appellate Court and to pay the arrears up to 31st December 2004.

6. So far as the last submission of Shri Khandeparkar is concerned, the decree passed by the Trial Court is very specific. The Trial Court has directed that the maintenance shall be paid to the Respondent No.1 by Defendant Nos.1-a to 1-e, 2 to 4 and 6 to 8 as per their proportionate share in the suit property. The said part of the decree passed by the Trial Court is not disturbed by the Appellate Court and therefore, it is obvious that the maintenance amount shall be paid by the concerned Defendants as per their respective proportionate shares in the suit property.

7. Hence I pass the following order :

i) The decree passed by the Appellate Court is confirmed

subject to modification that till 31st December 1993 the concerned Defendants will be liable to pay maintenance amount to the Respondent No.1-Plaintiff at the rate fixed by the Decree of the Trial Courtin Regular Civil Suit No.899 of 1988. The decree passed by the Appellate Court will become operative from 1st January 1994. Time of one year is granted to concerned Defendants to pay arrears of maintenance up to 31st December 2004. In so far as decree of the Appellate court directing payment of Rs.4,600/- is concerned, time of one month is granted to comply with the said decree.

ii) It is clarified that the concerned Defendants will have to pay maintenance amount as per their respective proportionate shares in the suit property.

iii) Second Appeal is disposed of in above terms.

iv) The concerned Court and the parties to act upon an authenticated copy of this order.

Judge.